IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.3335 OF 2005
IN
FIRST APPEAL NO.123 OF 1989

Mrs.Kumudini Vasant Kulkarni ..Applicant

Versus

Smt.Rajbai Mulji Gala & Anr. ..Respondents

Mrs.V.V.Thorat for the Applicant.

Mr.Suresh Gole for Respondents.

Coram : R.S.Mohite,J

Date : 9.8.2005.

PC

1. This is an application seeking to set aside the order of dismissal dated 1.7.2003 of First Appeal No.123/89 and for restoration of the said Appeal to file for the purpose of hearing on merits. It appears from the record that the Advocate for the present applicant who was the original appellant, expired in the year 1998. However, the fact that he has expired was not brought to the notice of this Court and when the matter appeared for final hearing the name of Shri C.A.Kaveria (then deceased) was shown on the board and the matter was dismissed on 1.7.2003. While dismissing the appeal, the single Judge observed that on an earlier occasion i.e. on 24.6.2003 the appeal was adjourned for one week by matter of last chance but on 1.7.2003 also none was present for the appellant. Advocate Shri H.V.Chande

was present for the respondents but he did not inform the Court that the Advocate for the appellant had expired. In her application for restoration the applicant states that the suit premises were being used by her for conducting typewriting and shorthand classes on monthly rent of Rs.65/-. It is seen from the application that ignorant of the fact that her appeal has been dismissed, she continued to pay monthly rent by depositing the same in the City Civil Court and the last payment was made by her on 6.7.2005 for the month of July/August-2005. It appears that decree came to be executed on 20.6.2005. The applicant is a lady who is 70 years old and she has just lost possession due to the execution of the decree.

2. Taking an overall view of the matter, I feel that the interest of justice would be met if prayer clauses-(a) & (b) are granted.

3. Application is made absolute in terms of prayer clauses-(a) & (b). It was prayed on behalf of the applicant that appeal may be immediately fixed for hearing so that if the applicant succeeds, she can get back premises. In the circumstances, appeal may be placed on board for final hearing in the week commencing from 22.8.2005. It is directed that status-quo as on today will be maintained by the respondents till the disposal of the appeal.

Application stands disposed of accordingly.

(R.S.Mohite,J)